FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MDD/152133

PRELIMINARY RECITALS

Pursuant to a petition filed September 11, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on December 12, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Disability Determination Bureau (DDB) correctly denied the Petitioner's application for Medical Assistance (MA).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: No Appearance

ADMINISTRATIVE LAW JUDGE:
David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner filed an application for elderly, blind or disabled Medicaid (MA) with the local agency on or about in May 23, 2013 alleging disability. The application was forwarded to the Disability Determination Bureau (DDB).

3. The DDB found that Petitioner was not disabled as the Medicaid program uses that term. A denial letter dated on August 29, 2013 was sent to Petitioner. He sought reconsideration, but the DDB affirmed its original determination and forwarded the matter to the Division of Hearings and Appeals for a hearing.

4. Petitioner's Medicaid application is based on knee, back hip and shoulder problems which Petitioner indicates are the result of a fall from a ladder. He had surgery on his right knee in the mid-eighties, apparently while in the State prison system after an injury sustained at a job in the prison system.

5. Petitioner is 51 years of age (DOB 3/2/1962). He attended school through the 11th grade but apparently has earned his GED.

6. Petitioner was not working at the time of the hearing. His employment from 1988 through 2000 was as a roofer.

7. Petitioner has not applied for Social Security benefits.

DISCUSSION

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. A finding of disability must be in accordance with Federal Social Security/SSI standards. *See Wis. Stats. §49.47(4)(a)4*. Because the standards are the same, a finding of no disability for Social Security/SSI purposes made within 12 months of the MA application is binding on a State Medicaid (MA) agency. Per the DDB there is no binding Social Security finding here so the Division of Hearings and Appeals must decide whether Petitioner is disabled as that term is used by in the Federal Social Security/SSI standards, i.e., must proceed to make a determination as to whether the Petitioner is disabled under the regulations governing the SSA and MA programs as to disability.

As noted above, a person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. In order to be eligible for Medicaid as a disabled person, an applicant must meet the same tests for disability as those used by the Social Security Administration to determine disability for Supplemental Security Income (Title XVI benefits). *§ 49.47(4)(a)4., Wis. Stats*. Title XVI of the Social Security Act defines "disability" as the inability to engage in any substantial gainful activity due to physical or mental impairments which can be expected to either result in death or last for a continuous period of not less than 12 months.

Under the regulations established to interpret Title XVI, a claimant's disability must meet the 12-month durational requirement before being found disabling. In addition, the disability must pass five sequential tests established in the Social Security Administration regulations. Those tests are as follows:

1. An individual who is working and engaging in substantial gainful activity will not be found to be disabled regardless of medical findings. *20 CFR 416.920*.

2. An individual who does not have a "severe impairment" will not be found to be disabled. *20 CFR 416.920(c).* A condition is not severe if it does not significantly limit physical or mental ability to do basic work. *20 CFR 416.921(a).*

3. If an individual is not working and is suffering from a severe impairment which meets the duration requirement and meets or equals a listed impairment in Appendix I of the federal regulations, a finding of disabled will be made without consideration of vocational factors (age, education, and work experience.) *20 CFR 416.920(d).*

4. If an individual is capable of performing work he or she has done in the past, a finding of not disabled must be made. *20 CFR 416.920(f).*

5. If an individual's impairment is so severe as to preclude the performance of past work, other factors, including age, education, past work experience and residual function capacity must be considered to determine if other types of work the individual has not performed in the past can be performed. *20 CFR 416.920(f).*

These tests are sequential. If it is determined that an applicant for MA is employed or does not suffer from a severe impairment it is not necessary to proceed to analyze the next test in the above sequence. If a person's condition does not meet the SSA listings an analysis of capability to perform past work must be made. If the individual cannot perform past work a determination of the residual functioning capacity to perform other work must be made. *20 CFR 416.920(a).*

Although the determination of disability depends upon medical evidence, it is not a medical conclusion; it is a legal conclusion. Thus, the observations, diagnoses, and test results reported by the Petitioner's physicians are relevant evidence; however the opinions of the doctors as to whether the Petitioner is disabled are not relevant. The definitions of disability in the regulations governing MA, Supplemental Security Income (SSI), and Social Security Disability Insurance (SSDI) programs require more than mere medical opinions that a person is disabled in order to be eligible. There must be medical evidence that impairment exists, that it affects basic work activities, that it is severe, and that it will last 12 months or longer as a severe impairment.

Here the Petitioner is not currently working. The DDB found that he does have a severe impairment. The next question is whether any of the Petitioner's conditions meet the Listings. The listings for are found at *20 CFR Pt. 404, Subpt. P, Appendix 1, Part A, §§ 1.00 to 14.00.* The Petitioner reports the medical problems as noted at Finding # 4 and those were by and large confirmed by a consultative exam that the DDB had Petitioner attend. I have reviewed the listings and Petitioner does not meet those requirements.

The next question would then become whether the Petitioner has the residual functional capacity to perform past work. Past work includes any work done in the 15 years prior to application. *20 CFR 414.960(b)(1).* Petitioner is not capable of work as a roofer. The final question is whether Petitioner is capable of other work.

This would then bring the analysis to the final step, a determination as to whether Petitioner's impairments coupled with his age, education, past work experience and residual function capacity preclude him from doing other work. The DDB concluded that Petitioner is capable of light work under 20 CFR Pt. 404, Subpt. P, App 2, Rule 202.10. I include the Federal definitions of both sedentary and light work:

§ 404.1567 Physical exertion requirements.

To determine the physical exertion requirements of work in the national economy, we classify jobs as *sedentary, light, medium, heavy,* and *very heavy*. These terms have the same meaning as they have in the *Dictionary of Occupational Titles,* published by the Department of Labor. In making disability determinations under this subpart, we use the following definitions:

(a) *Sedentary work*. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

(b) *Light work*. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

…

20 CFR §404.1567.

This becomes a very close call. There is very little medical evidence as Petitioner has not seen a doctor in several years. He did, however, complete a consultative exam arranged by the DDB. It found that Petitioner's ability to work was moderately to severely decreased. While Petitioner is strong and can lift 20 pounds I cannot conclude that he has the ability to do a great deal of walking, standing or sitting for any length of time. Petitioner's testimony was that he can walk about two blocks and cannot sit for a long period without having to move because of pain. The consultative exam was generally supportive of this testimony. Given the definitions above, I do not find that Petitioner is capable of light work. I do not find that he is capable of the degree of walking and standing or the length of time sitting contemplated by the definition of light work though he is capable of sedentary work under the above definition.

Given Petitioner's age (51), education (GED) and work experience (none in approx. 13 years and the 12 before that as a roofer) I conclude that he is disabled under 20 CFR Pt. 404, Subpt. P, App 2, Rule 201.14 as a person closely approaching advance age with a high school degree but no skilled work history that is transferrable to other work.

CONCLUSIONS OF LAW

That the available evidence is sufficient to demonstrate that Petitioner meets the criteria necessary for a finding that he is disabled as that term is defined by Social Security regulation.

THEREFORE, it is ORDERED

That this matter is remanded to the county agency with instructions to continue processing Petitioner's request for medical assistance and to certify his eligibility for Medicaid assuming he meets all other eligibility criteria. This must be done within 10 days of the date of this Decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of December, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on December 30, 2013.

Milwaukee Enrollment Services
Disability Determination Bureau